

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DEMOCRACY FORWARD FOUNDATION,
1333 H Street NW
Washington, DC 20006

Plaintiff,

vs.

U.S. DEPARTMENT OF STATE,
2201 C Street NW
Washington, DC 20520,

Defendant.

Case No.

COMPLAINT

1. Plaintiff Democracy Forward Foundation brings this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), against Defendant U.S. Department of State (“the Department”) to compel it to produce documents that would shed light on the effects of the revisions the Department made to the “public charge” section of the Foreign Affairs Manual (“FAM”) in January 2018, as well as the process by which those revisions were made.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

3. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time limit provisions in FOIA, Plaintiff is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

PARTIES

5. Plaintiff Democracy Forward Foundation is a not-for-profit organization incorporated under the laws of the District of Columbia and based in Washington, D.C. Plaintiff works to promote transparency and accountability in government, in part, by educating the public on government actions and policies.

6. Defendant U.S. Department of State is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. The Department has possession, custody, and control of records to which Plaintiff seeks access.

FACTS

7. On January 3, 2018, the Department revised the section of the Foreign Affairs Manual governing the “public charge” ground of inadmissibility. *See* 9 FAM § 302.8.

8. The revisions required consular officers within the Department to review a sweeping array of non-cash public benefits that a visa applicant, or family members in the applicant’s household, had used or were currently using, for the purpose of assessing whether the applicant was likely to rely on public benefits in the future. *Id.*

9. The FAM revisions similarly required consular officers to consider the past and present use of non-cash public benefits by an individual who wished to serve as a sponsor for the visa applicant, including the use of such benefits by those living in the would-be sponsor’s household. *Id.*

10. On October 4, 2018, Plaintiff submitted a FOIA request to the Department, seeking access to the following records for the period of January 20, 2017 to the date the search is conducted:

- a. All records discussing or containing statistics on State Department visa denial determinations in fiscal year 2018, including any tables reflecting

the number of initial findings of inadmissibility on “public charge” grounds, the number of initial findings of inadmissibility on “public charge” grounds that are subsequently overcome, and the ultimate number of visa denials related to the “public charge inadmissibility ground.”

- b. All records or communications discussing revisions to the “public charge” ground of inadmissibility in the FAM.
- c. All records or communications discussing or explaining how State Department officials should interpret and/or apply the “public charge” ground of inadmissibility in the FAM, including but not limited to guidance documents, policy memoranda, evaluation rubrics, processing instructions, training manuals, field manuals, desk references, handbooks, or frequently asked questions or FAQs.
- d. All records or communications concerning the forthcoming DHS proposal on “public charge.”

11. The FOIA request further sought a waiver of all fees associated with the request under 5 U.S.C. § 552(a)(4)(A)(iii), which requires a fee waiver if the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

12. On November 7, 2018, the Department confirmed receipt of Plaintiff’s FOIA request and assigned it a tracking number of F-2019-00183.

13. As of the date of this Complaint, the Department has failed to notify Plaintiff whether and when it will comply with Plaintiff’s FOIA request (*see* 5 U.S.C. § 552(a)(6)(A)(i)), whether it will produce all requested records, or whether it will demonstrate that they are

lawfully exempt from production (*see id.* § 552(a)(6)(C)). Nor has the Department notified Plaintiff of the scope of any responsive records the Department intends to produce or withhold, and the reasons for any withholdings, or informed Plaintiff that it may appeal any adequately specific, adverse determination.

14. Because the Department has “fail[ed] to comply with the applicable time limit provisions” of the FOIA, even with the benefit of any extensions of time that it might have claimed, Plaintiff is “deemed to have exhausted [its] administrative remedies.” *See id.* § 552(a)(6)(C)(i).

CLAIM FOR RELIEF

Count One (Violation of the Freedom of Information Act, 5 U.S.C. § 552)

15. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

16. By failing to respond to Plaintiff’s request within the statutorily prescribed time limit, Defendant has violated its duties under 5 U.S.C. § 552, including but not limited to the duties to conduct a reasonable search for responsive records, to take reasonable steps to release all nonexempt information, and to not withhold responsive records.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

- a. Order Defendant to conduct a search for any and all responsive records to Plaintiff’s FOIA request using search methods reasonably likely to lead to discovery of all responsive records;

- b. Order Defendant to produce, by a date certain, any and all non-exempt responsive records and a *Vaughn* index of any responsive records withheld under a claim of exemption;
- c. Enjoin Defendant from continuing to withhold any and all non-exempt responsive records;
- d. Order Defendant to grant in full Plaintiff's request for a fee waiver;
- e. Award Plaintiff its costs, attorneys' fees, and other disbursements for this action; and
- f. Grant any other relief this Court deems appropriate.

Dated: December 12, 2018

Respectfully submitted,

/s/ John T. Lewis
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